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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-485

ROBERT GOTTSCHALK, ACTING COMMISSIONER OF PATENTS,

Petitioner,

vs.

GARY R. BENSON AND ARTHUR C. TABBOT,

Respondents.

BRIEF AMICUS CURIAE FOR HONEYWELL INC.

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BRIEF AMICUS CURIAE FOR HONEYWELL INC.

Honeywell Inc. submits this brief amicus curiae with the written consent of all the parties to the case. The brief is filed in accordance with the provisions of Rule 42(2) of the Rules of the Supreme Court of the United States.

I.

QUESTION PRESENTED.

This case presents the question whether a method comprised of a series of mathematical operations for converting numerical information from one number form to another is a patentable discovery which promotes the progress of the useful arts within the purview of Art. I, § 8, cl. 8, of the Constitution of the United States.

II.

STATEMENT OF THE CASE.

The question presented arises because the court below has conferred patentability on a scientific truth and its mathematical expression. Such a judicial determination is contrary to the constitutional purpose of the Patent System, and calls for a reaffirmance of the vitality of the principle so often stated by this Court and by inferior courts that patents cannot issue for the discoveries of phenomena of nature.

More particularly, the Court below reversed[1] the Patent Office's adherence to this sound principle, and held patentable claims 8 and 13 of the Benson and Tabbot patent application[2] for a method comprising a series of mathematical operations for converting numerical information from a binary coded decimal number form into a true binary number form.[3]

1. The decision below is reported, 441 F. 2d 682, 58 C.C.P.A. (Pat.) 1134 (1971).

2. The application by respondents as inventors was filed in the U. S. Patent Office on October 9, 1963 and bears Serial No. 315,050.

3. Petitioner's Brief for Certiorari at 3-7.

III.
INTEREST OF AMICUS CURIAE.

Honeywell Inc. (Honeywell) has both a private and a representative public interest in the outcome of this case.

Honeywell views its overall business as being primarily related to the manufacture and marketing of automation equipment and systems. For example, such systems frequently incorporate electronic computers which are intended to be used in varying ways for the handling and manipulation of information or data for business and process control purposes.

Like the abacus of the ancients, the mechanical calculator of the industrial revolution, or the pocket slide rule of the student scientist and the engineer of today, the modern electronic computer is for all practical purposes nothing more or less than an aid to computation. In other words, the computers provided by Honeywell and the other computer manufacturers to their customers are but tools awaiting specific direction from a computer program. Where, for example, a computer program is written to convert binary coded decimal (BCD) information into true binary information, the Benson and Tabbot claims become most relevant.[4] The mere operation of a computer under the

4. The computers manufactured by Honeywell use information represented in various so-called binary forms; that is, as a sequence of "ones" and "zeros". Numerical business data is generally expressed in conventional decimal form; that is, as a sequence of any of the numerals 0, 1, 2, . . . 9. A computer may be directed to represent any conventional decimal number as a binary sequence of "ones" and "zeros". For example, the docket number of this case, 485, can be expressed as a binary form of 4, followed by a binary 8 and a binary 5: 0100, 1000, 0101 (in binary coded decimal or so-called "BCD" notation). That same number can also be

control of the program may constitute an infringement of such claims, if such program is determined to be patentable. This is so even though the computer itself may have been constructed and operated with many other types of programs long prior to the claimed discovery of Benson and Tabbot.

When a private patent monopoly is granted pursuant to the Constitution, it is prerequisite that the public interest in such exclusive rights also be duly regarded. This case raises the question whether or not a private interest in a mathematical method such as that of Benson and Tabbot is consistent with the public interest in the free use of any scientific principle or intellectual concept. Both manufacturers and users of computers which, *per se*, are free of patent infringement, will suffer an unknowable business burden if those same non-infringing machines become infringing ones merely by reason of being controlled by any of the infinite variety of programs which such computers are inherently designed to use. A mathematical method, *per se*, should not become a patent infringement by reason of being used on an unpatented computer.

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expressed in so-called true binary notation as 111100101. Thus, 485 equals 0100, 1000, 0101 equals 111100101, and any expression of a number in one notation may be converted for convenience of computer use to any other form of notation. The converting of information in BCD form into true binary form may be done in various ways, including the method of Benson and Tabbot. The decision below, 441 F. 2d at 683, 56 C. C. P. A. (Pat.) at 1136.

IV.

THE CONSTITUTIONAL PROVISION.

Art. I, § 8, cl. 8 of the Constitution of the United States provides:

"The Congress shall have power. . . .

* * * * *

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

V.

THE CONGRESSIONAL ENACTMENTS.

The Congress has enacted legislation under the limited power granted in Art. I, § 8, cl. 8 of the Constitution, by providing statutory protection for the discoveries of inventors in the useful arts in Title 35, United States Code, and for the writings of authors in science in Title 17, United States Code.

VI.

ARGUMENT.

The Background of This Case Deals with Numbers.

The Benson and Tabbot method of claims 8 and 13 is not a discovery which promotes the useful arts within the constitutional purpose.

The complexities of technical language which burden this case tend to obscure its straightforward realities. The subject matter here is characterized by numbers, as expressions of information, and by the arbitrary symbols of mathematics for recording and manipulating numbers. We are dealing, simply enough, with the language of numbers.

Within the privacy of the human mind, man reasons. He perceives natural truths and defines philosophy. Mathematics is a means for the outward expression of his philosophy. The thoughts of one man can be communicated to and can become the thoughts of others. Mental concepts find their expression and are transferred through the symbols and sounds of language. Mathematics, as a philosophy produced by the reasoning of the human mind, finds its real expression in a language of many "dialects": *inter alia*, Roman numerals, Arabic decimal numbers, and binary digits.

It is the peculiar simplicity of binary digits, as a language dialect of only two symbols, one and zero, and the facility of the electronic computer to handle such digits in vast quantities at incredible speeds, that has made the binary "dialect" of mathematical language a powerful way to manipulate and communicate information. This language dialect can serve to express information as varied as the human intellect can conceive, whether, for example, it be

numbers to represent scientific data, the letters of the alphabet and other symbols to represent a combination of words, or a combination of mixed numbers, letters and symbols to represent the business facts of bank balances and names. Binary numbers can and do symbolize all of these forms of information.

Benson and Tabbot perceived a natural truth found in the mathematical relationship between information expressed in binary coded decimal (BCD) form, a mathematical "dialect", and the same information expressed in yet another mathematical "dialect" of true digital binary form. Benson and Tabbot expressed what they had perceived in the ordinary, written English language found in the description and claims of their patent application Serial No. 315,050. In words, they defined their discovered mental concept as a series of mathematical steps or operations for converting or translating information expressed in BCD form, in accordance with their discovered mathematical relationship, into true binary form.

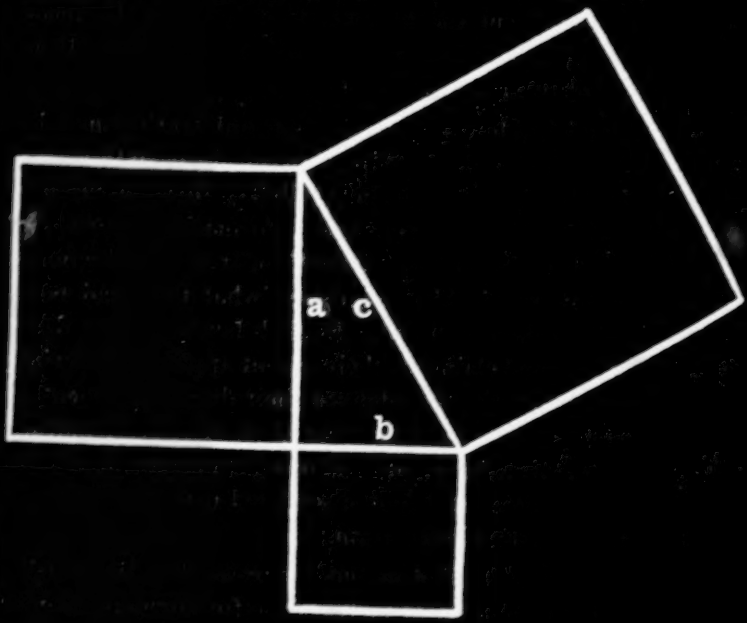
The Benson and Tabbot method, expressed in the words of patent claims, is a set of instructions for communicating the mental concept of their discovered mathematical relationship. The mathematical "dialect" of BCD becomes translatable into the mathematical "dialect" of true binary numbers. To be sure, other mental concept methods of converting or translating BCD numbers into true binary numbers were previously known, but were based on other mathematical relationships perceived and expressed by others.[5]

In the sixth century B. C., the Greek philosopher Pythagoras perceived the natural or scientific truth of an orderly and predictable relationship between the two sides and the hypotenuse of a right angle triangle.[6] By drawing geo-

5. The decision below, 441 F. 2d at 683, 58 C.C.P.A. (Pat.) at 1136.

6. 18 Encyclopaedia Britannica 905-07 (1971).

metric squares upon each of the dimensions of such a triangle, the discovered truth can be presented in visual form:



The discovered truth was that the area of the two smaller squares formed on the sides of the triangle is equal in area to the square formed on the hypotenuse of the triangle. It then became possible to express this mental concept discovery in the symbolic language of mathematics, as an equation:

$$a^2 + b^2 = c^2$$

now known to every student of geometry or algebra as the Pythagorean Theorem.

Just as the truth perceived by Pythagoras in the relationship between the sides of a triangle can be expressed in the symbolic language of mathematics, so too the truth perceived by Benson and Tabbot in a particular relation-

ship between BCD and true binary numbers can be expressed in the symbolic language of mathematics. The sequence of English-word "steps" defined by the Benson and Tabbot claims 8 and 13 is simply a set of instructions for using the natural mathematical relationship by performing a series of mathematical operations to convert numerical information from a BCD number form into a desired true binary number form. In exactly this same way, the Pythagorean discovery can find its further expression in a set of instructions for using the natural mathematical relationship by performing a series of mathematical operations to convert known numerical information about two of the sides of a triangle into desired information about the third side. For example:

> I claim the method of determining the hypotenuse of a triangle, which comprises the steps of:
>
> 1. testing the angle of the triangle opposite the hypotenuse;
> 2. if the angle is equal to 90 degrees, measuring one side of the triangle and storing the measurement;
> 3. measuring the other side of the triangle, and storing the measurement;
> 4. multiplying the measurement of said one side by itself, and storing the product;
> 5. multiplying the measurement of said other side by itself, and storing the product;
> 6. adding the product of step 4 to the product of step 5;
> 7. computing the square root of the sum of step 6; and
> 8. storing the result of step 7.

Can it be said that a novel set of instructions for the mathematical manipulation of Pythagoras' equation, or for the mathematical conversion of BCD to true binary numbers, is susceptible to patenting?

It shall be the purpose of this brief amicus curiae to demonstrate that no man is entitled to a monopoly which restricts the full freedom of other men's minds to share scientific or philosophical truths. The common property of mankind cannot be patented.[7] The perception by Benson and Tabbot of a particular mathematical relationship, which permits a translation between two of the language dialects of the binary arithmetic peculiar to computers, cannot justify a patent monopoly in the language expression of that perception as a claimed set of instructions for communicating and using their mental concept. It is urged that such subject matter is no more patentable than is the expression of any scientific or philosophical truth which, in the future, may be newly perceived or discovered.

The Mere Language Expression of a Mathematical Truth Is Not a Constitutionally "Useful Art".

Art. I, § 8, cl. 8 of the Constitution is "both a grant of power and a limitation", and in particular, "is limited to the promotion of advances in the 'useful arts.'"[8] No

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7. As stated by the court in Detmold v. Reeves, 7 F. Cas. 547 (No. 3,831) (C.C.E.D. Pa. 1851):

"The more comprehensive truths of all philosophy, whatever specific name we give to them, cannot be specially appropriated by any one. They are almost elements of our being. We have not reasoned them out, perhaps, and may be even unconscious of their action; yet they are about us, and within us, entering into and influencing our habitual thoughts and pursuits, and modes of life—contributing to our safety and happiness. And they belong to us as effectively as any of the gifts of Heaven. If we could search the laws of nature, they would be, like water and air, the common property of mankind; and those theories of the learned which we dignify with this title, partake, just so far as they are true, of the same universally diffused ownership. It is their application to practical use which brings them within the domain of individuals; and it is the novelty of such an application that constitutes it the proper subject of a patent." 7 F. Cas. at 549

8. Graham v. John Deere Co. of Kansas City, 383 U. S. 1, 5 (1966).

matter how important or beneficial to the public, the Benson and Tabbot method still must be a process *in the useful arts* in order to constitute patentable subject matter.[9] The "beneficent and imposing character of the discovery can not change the legal principles upon which the law of patents is founded."[10]

In the eighteenth century, the phrase "useful arts" meant the practical arts or the trades: the activities and physical things which are more of the hands and body than of the mind, as opposed to the liberal or fine arts.[11]

Before our own patent system, the English patent statute[12] drew a clear line of distinction between "manufactures" which produced physical effects by physical forces and were patentable, and the other inventive subject matter for which no protection was provided.[13] In the first United States patent statute, Congress recognized the same distinction in the enumeration of the subject matter for which patents might be granted.[14]

The Constitutional clause, Art. I, § 8, cl. 8, draws a clear

9. "Epoch-making 'discoveries' of 'mere' general scientific 'laws' without more cannot be patented. So the great 'discoveries' of Newton or Faraday could not have been rewarded with such a grant of monopoly." Katz v. Horni Signal Mfg. Corp., 145 F. 2d 961 (2d Cir. 1944), *cert. denied*, 324 U. S. 882 (1945).

10. Morton v. New York Eye Infirmary, 17 F. Cas. 879, 883 (No. 9865) (C.C.S.D. N.Y. 1862).

11. Coulter, The Field of the Statutory Useful Arts, Part III, 34 J. Pat. Off. Soc'y. 718, 733-36 (1952); Coulter, The Field of the Statutory Useful Arts, Part II, 34 J. Pat. Off. Soc'y. 487, 495-500 (1952); and Noah Webster, American Dictionary of the English Language (1848 ed.). *See* Hotel Security Checking Co. v. Lorraine Co., 160 F. 467, 469 (2d Cir. 1908).

12. Statute Against Monopolies, 21 Ja. I. ch. 3 (1623).

13. 1 Robinson, Law of Patents § 69 (1890).

14. *Id.* The Act of 1790, ch. 7, 1 Stat. 109, was entitled: "An Act to Promote the Progress of Useful Arts", and enumerated patentable subject matter as an "art, manufacture, engine, machine or device, or any improvement thereon".

distinction between the tangible realities of the "useful arts" and the intellectual expressions of thought in "science".[15] The clause itself is a balanced sentence, common in eighteenth century writing:

Science — Authors — Writings
Useful arts — Inventors — Discoveries[16]

At the time of the drafting of the Constitution, the word "science" meant learning in general, in the common context of "government, religion, morality, and every other science."[17]

Does the Benson and Tabbot discovery fall within the constitutional intendment of "useful arts"? Benson and Tabbot did two things: first, they discovered the natural truth or law with respect to a particular relationship existing between BCD and true binary number expressions of the same information; and, second, they expressed that relationship in patent claim wording as an algorithm[18] or set of instructions for manipulating one number form into another in accordance with the discovered relationship.

As to the first, their discovery itself, the mere perception of a phenomenon of nature is not patentable subject mat-

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15. *See* Graham v. John Deere Co. of Kansas City, 383 U. S. 1, 5 n. 1 (1966); and Lutz, A Clarification of the Patent Clause of the U. S. Constitution, 18 Geo. Wash. L. Rev. 50 (1949).

16. Lutz, *supra* note 15, at 58.

17. Letter to Elbridge Gerry (January 26, 1799), IX The Writings of Thomas Jefferson, at 78 (Lipscomb & Bergh ed.).

18. An algorithm has been defined as:

> "A prescribed set of well-defined rules or processes for the solution of a problem in a finite number of steps, e.g., a full statement of an arithmetic procedure for an evaluation, to a stated degree of precision."

American National Standards, Inc., No. ANSI, X3.12-1970, American National Standard Vocabulary of Information Processing, at 12 (1970).

ter.[19] In other words, Benson and Tabbot's act of discovery, no matter how immensely useful and important in the world of science, business or commerce, cannot in and of itself be patentable.

"While a scientific truth, or its mathematical expression is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be. Mackay Radio & Telegraph Co. v. Radio Corp., 306 U. S. 86 at page 94, 59 S. Ct. 427, 83 L. Ed. 506. He who discovers a hitherto unknown scientific fact or law of nature has no claim to a monopoly of it; if there is to be invention from such a discovery it must come from the application of the law of nature or scientific fact to a new and useful end. Funk Brothers Seed Company v. Kalo Inoculant Company, 333 U. S. 127, 68 S. Ct. 440, 92 L. Ed. 588. See also DeForest Radio Company v. General Electric, 283 U. S. 664, 685, 51 S. Ct. 563, 75 L. Ed. 1339; Wall v. Leck, 9 Cir., 66 F. 552, 555; In re Modine, 57 F. 2d 355, 356, 19 C. C. Pa., Patents 1058. Discovery of a previously unknown law of operation, involved in no new method, has never been held to be invention. The application of the

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19. *E.g.*, Funk Bros. Seed Co. v. Kalo Inoculant Co., 333 U. S. 127 (1948) wherein Mr. Justice Douglas, speaking for the Court, stated:

"For patents cannot issue for the discovery of the phenomena of nature. See Le Roy v. Tatham, 14 How. 156, 175, 14 L. Ed. 367. The qualities of these bacteria, like the heat of the sun, electricity, or the qualities of metals, are part of the storehouse of knowledge of all men. They are manifestations of laws of nature, free to all men and reserved exclusively to none. He who discovers a hitherto unknown phenomenon of nature has no claim to a monopoly of it which the law recognizes. If there is to be invention from such a discovery, it must come from the application of the law of nature to a new and useful end. See Telephone Cases, 126 U. S. 1, 532, 533, 8 S. Ct. 778, 780, 781, 31 L. Ed. 863; DeForest Radio Co. v. General Electric Co., 283 U. S. 664, 684, 685, 51 S. Ct. 563, 568, 569, 75 L. Ed. 1339; Mackay Radio & Tel. Co. v. Radio Corp., 306 U. S. 86, 94, 59 S. Ct. 427, 431, 83 L. Ed. 506; Cameron Septic Tank Co. v. Saratoga Springs, 2 Cir., 159 F. 453, 462, 463." 333 U. S. at 130.

law must be novel and inventive in character. Luten v. Whittier, 6 Cir., 251 F. 590; General Electric Co. v. Cooper Hewitt Electric, 6 Cir., 249 F. 69." Davison Chem. Co. v. Joliet Chemicals, Inc., 179 F. 2d 793, 794-95 (7th Cir. 1950), *cert. denied*, 340 U. S. 816 (1950).

As to the second, the expression by Benson and Tabbot of instructions for manipulation of the natural relationship of the two number forms so as to convert one mathematical language "dialect" to another, is nothing more or less than a part of the "science" of mathematics. As such, claims 8 and 13 do not relate to a useful art[20] and cannot be the subject of a patent monopoly because they are outside the limited power of the Congress to grant such monopoly rights.[21]

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20. The Court below concluded that the Benson and Tabbot method was a useful art by reason of the fact that the method could be used in connection with the operation of a machine, namely, a computer. 441 F. 2d at 687, 688, 58 C.C.P.A. (Pat.) at 1142, 1143. The issue, however, is whether the method, in and of itself, is a useful art; not whether the computer is a useful art. *Cf.* Brenner v. Manson, 383 U. S. 519 (1966). This is particularly true since admittedly the Benson and Tabbot method can be performed by a human being utilizing "any kind of writing implement and any kind of recording medium—'pencil and paper'." 441 F. 2d at 688, 59 C.C.P.A. (Pat.) at 1143. In other words, the fact that a set of musical instructions contained on a sheet of music, or punched as holes into a roll of paper, will enhance the manual or automatic operation or playing of a piano, which admittedly is a machine in the useful arts, does not render the set of musical instructions patentable subject matter, nor the piano a new machine when being so played. *See* Baker v. Selden, 101 U. S. 99 (1880).

21. *See* Detmold v. Reeves, 7 F. Cas. 547, 549 (No. 3831) (C.C.E.D. Pa. 1851). ("He who devised the art of multiplication could not restrain others from using it after him, without paying him for a license"); and *Ex parte* Meinhart, 1907 Dec. Com. Pat. 238, 239, 129 O. G. Pat. Off. 3503 (1907) ("It is conceivable that some person after long and arduous study might discover a new method for solving certain mathematical problems which was much simpler and shorter than any known method; but such method would not be a proper subject for a patent").

The Algorithm of a Newly Discovered Mathematical Truth Cannot Be "Unobvious" in the Statutory Patent Sense.

In its decision below, the Court noted that "no question is raised as to . . . unobviousness" of the Benson and Tabbot claims.[22] To the contrary, it is urged that the issue of unobviousness is inherent in the question now before the Court.

The mere language expression of a newly discovered mathematical relationship cannot satisfy the statutory requirement for "unobviousness". Once given a natural truth or law, any algorithm[23] of the truth or law is "obvious" within the meaning of Section 103 of the Patent Statute.[24]

An electronic digital computer of the programmable type is predetermined by its design and construction to perform a fixed number of distinct operations, sometimes referred to as "instructions". Typical instructions are such mathematical method steps as ADD, SUBTRACT, MULTIPLY, DIVIDE, SHIFT, and TRANSFER. Once a particular computer has been constructed, the type of instructions which it is capable of performing are fixed, even though the sequence in which those instructions may be utilized is in-

22. The decision below. 441 F. 2d at 684, 58 C.C.P.A. (Pat.) at 1137.

23. A definition of the term "algorithm" is set forth in note 18, *supra*.

24. 35 U. S. C. § 103 (1952) provides:

"Conditions for patentability; non-obvious subject matter
A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made."

finitely variable.[25] A programmer seeking to control the operation of that computer will author or compose a program, first in a general way by setting forth the desired performance objectives in relatively broad terms as an algorithm, and then in more detailed terms as a series of step-by-step instructions for the computer. An example of just such an algorithm, capable of being further expressed as a series of instructions or as a "program" for a computer,[26] is found in either of the Benson and Tabbot claims 8 and 13.

The Benson and Tabbot method or algorithm cannot fulfill the most fundamental prerequisite for patentability: unobviousness.[27] Persons having ordinary skill in the mathematical arts, including the art of programming digital computers, are charged with constructive knowledge of the particular natural relationship between numerical information in BCD form and in true binary form, which was dis-

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25. The computer is susceptible for use with an infinite variety of program instruction sequences for the purpose of carrying out any of the functional or computational needs of the user. The author of a program may be the creator of a "writing" which by reason of its originality promotes the progress of "science", as contemplated by the Constitution. The fact that proprietary protection under the copyright statutes is different from that under the patent statutes, and the fact, that some may consider copyright not to be an effective and practical form of protection for computer programs, does not alter the fundamental nature of a computer program as an authored work protectible as a monopoly only under what Congress provides by way of statutory copyright protection. *See, e.g.*, Bunkman, Protection of Proprietary Interest in Computer Programs, 51 J. Pat. Off. Soc'y. 135, 136 (1969); and Bender, Computer Programs: Should They Be Patentable?, 68 Colum. L. Rev. 241, 248-50 (1968).

26. "To illustrate the entire procedure in detail a representative program is set forth in the table for converting a two-digit binary coded decimal number to ordinary binary." Benson and Tabbot application S. N. 315,050, Record, at ——.

27. 35 U. S. C. § 103 (1952).

covered by Benson and Tabbot.[28] In other words, given the particular natural truth or law discovered by Benson and Tabbot, no inventive act can exist in expressing that mathematical concept as either the Benson and Tabbot method or, indeed, any other algorithmic expression of it. The creation of any such algorithms would be obvious to a person having ordinary skill in the mathematical arts.[29]

The Patenting of Computer Programs Will Raise Unsolvable Practical Problems for the Computer Industry.

Since the modern electronic computer utilized in automation systems is for all practical purposes nothing more or less than an aid to computation, the computers provided by manufacturers to their customers are but tools awaiting specific direction from a computer program.

As a manufacturer and user of computers, Honeywell is opposed to the granting of patent claims covering computer programs. Under the present statute,[30] the mere operation of an unpatented computer, under the control of a program, may constitute an infringement of such claims. This is so even though the computer itself may have been constructed and operated with many other types of programs long prior to the granting of program patent claims.

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28. Funk Brothers Seed Company v. Kalo Inoculant Co., 333 U. S. 127, 131-32 (1948); O'Reilly v. Morse, 56 U. S. (15 How.) 62, 115 (1853); Templeton Patents, Ltd. v. J. R. Simplot Co., 336 F. 2d 261, 264 (9th Cir. 1964); Davison Chem. Corp. v. Joliet Chemicals, Inc., 179 F. 2d 793, 795 (7th Cir. 1950), *cert. denied*, 340 U. S. 816 (1950); Loew's Drive-In Theaters v. Park-In Theaters, Inc., 174 F. 2d 547, 551 (1st Cir. 1949), *cert. denied*, 338 U. S. 822 (1949); and A. & E. Pitman Mfg. Co. v. Pitman, 37 F. 2d 582, 583 (D. Mass. 1930), *aff'd.*, 50 F. 2d 744 (1st Cir. 1930).

29. Cases cited note 28, *supra*.

30. 35 U. S. C. § 271 (1952).

There are practical problems associated with the granting of patent protection which covers computer programs. A user of a computer designed to operate under program control will certainly know if he has wrongfully copied from the work of another. However, when a user independently creates or authors a new program, he has no reasonable way to determine if someone else has previously authored that same program. He cannot make this determination by even the most diligent search in the Patent Office. The Commissioner of Patents acknowledges that the Patent Office itself cannot make reliable searches in connection with the required examination of applications for patent on such subject matter.[31] Despite the inadequacy of the search and examination procedure the user will face a statutory presumption of validity[32] with respect to any patent covering a computer program, regardless of the form in which the subject matter may be claimed. The resulting burden upon the public and the courts that arises from the ambiguities and uncertainties of patents covering mental processes and scientific principles, such as the Benson and Tabbot claims seek to cover, will raise a grave risk of discouraging the continued competitive growth of the important information systems or computer industry.

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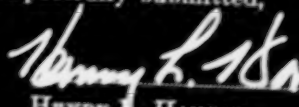
31. The reasons are set forth in Petitioner's Brief for Certiorari at 14.

32. 35 U. S. C. § 282 (1952).

CONCLUSION.

The expression of a newly perceived scientific or philosophical truth is the common property of mankind and is not within the definition of the patentable useful Arts as intended by the Constitution. The natural truth expressed in a method for converting numerical information from one mathematical dialect to another, regardless of the form of its expression in words or symbols, cannot be patented. The method of Benson and Tabbot claims 8 and 13 does not promote the progress of useful Arts pursuant to the grant of power and limitation of the Constitution. The decision below should be reversed.

Respectfully submitted,



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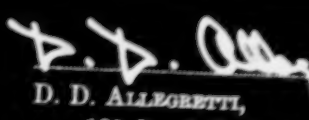

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